

EX PARTE OR LATE FILED

Squire, Sanders & Dempsey

DOCKET FILE COPY ORIGINAL

*U. S. Offices:
Cleveland, Ohio
Columbus, Ohio
Jacksonville, Florida
Miami, Florida
New York, New York
Phoenix, Arizona*

*Counsellors at Law
1201 Pennsylvania Avenue, N. W.
P. O. Box 407
Washington, D. C. 20044-0407*

*Telephone: (202) 626-6600
Cable Squire DB
Telex: (202) 626-6780*

*International Offices:
Brussels, Belgium
Budapest, Hungary
London, England
Prague, Czech Republic*

May 29, 1996

*Direct Dial Number
(202) 626-6209*

By Hand

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED

MAY 29 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

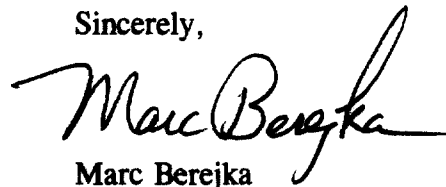
RE: Notice of Written Ex Parte Presentation -- CC Docket No. 96-61

Dear Mr. Caton:

Today, Herbert E. Marks and the undersigned, attorneys for the State of Hawaii, had hand-delivered a letter to Sharille Ismail of the Competitive Pricing Division, discussing the State of Hawaii's position in the above-referenced proceeding.

In accordance with Section 1.1206(a) of the Commission's rules, two copies of the letter are being submitted for inclusion in the public record. Please contact me if you have any questions.

Sincerely,


Marc Berejka

cc: Sharille Ismail, Esquire

No. of Copies rec'd
List: ABCDE

021

Squire, Sanders & Dempsey

U. S. Offices:
Cleveland, Ohio
Columbus, Ohio
Jacksonville, Florida
Miami, Florida
New York, New York
Phoenix, Arizona

International Offices:
Brussels, Belgium
Budapest, Hungary
London, England
Prague, Czech Republic

Counsellors at Law
1201 Pennsylvania Avenue, N.W.
P. O. Box 407
Washington, D. C. 20044-0407

Telephone: (202) 626-6600
Cable Squire DC
Telecopier: (202) 626-6780

May 29, 1996

Direct Dial Number
(202) 626-6624

By Hand

Sharille Ismail, Esquire
Competitive Pricing Division
Federal Communications Commission
Room 518J
1919 M Street, N.W.
Washington, D.C. 20554

Re: Written Ex Parte Presentation -- CC Docket No. 96-61

Dear Mr. Ismail:

On behalf of the State of Hawaii (the "State"), this responds to questions raised in our meeting of May 22, 1996. Specifically, we provide additional information on the development of the Commission's rate integration and geographic averaging policies.

Rate Integration. As indicated in the State's comments and reply comments in this proceeding, rate integration traditionally has applied to all carriers and all services. See, e.g., Reply Comments of the State of Hawaii at 4-6 (May 3, 1996). In the State's view, there could be no other result because rate integration derives from Section 202(a) of the Communications Act, which itself applies to all carriers and services. See 47 U.S.C. § 202(a); see also Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and the Offshore Points of Hawaii, Alaska and Puerto Rico/Virgin Islands, 61 FCC 2d 380, 383 (1976) (which is also cited in the legislative history of the Telecommunications Act of 1996) [hereinafter "Integration of Rates and Services"].

In our meeting, you asked whether historically rate integration was predicated on the availability of distance insensitive transmission facilities, e.g., satellite services. Although it is true that the advent of satellite services served as a catalyst for the Commission's first rate integration decisions, the Commission's precedent indicates that rate integration is independent of the use of satellites. It has been applied to carriers whether or not such carriers use satellites.

Sharille Ismail, Esquire
May 29, 1996
Page 2

See, e.g., Application of GTE Corporation, 94 FCC 2d 235, 258-60 & 263 (1983) (conditioning GTE's acquisition of Sprint on integration of Hawaii into Sprint's rate structure, and doing so irrespective of the facilities used to carry Sprint's Hawaii-to-Mainland traffic).

We also discussed the meaning of the rate integration policy. Again, rate integration does not dictate rate levels or a specific rate structure. Rather, under rate integration, carriers cannot discriminate between areas of the country in methods for calculating prices for substantially similar services. If they did, they would run afoul of Section 202(a)'s prohibition against unreasonable discrimination based on a subscriber's location. See MTS and WATS Market Structure, 81 FCC 2d 177, 192 (1980). Thus, even a rate which might be particularly distance sensitive can be integrated. The key is that the method for calculating that rate is applied in a manner that is not geographically discriminatory. This concept is embodied in Section 254(g), added in the Telecommunications Act of 1996, wherein it provides that the Commission's rules shall "require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State." Pub. L. No. 104-104, 110 Stat. 56, 73 (1996).

The discussions of rate integration are often coupled with discussions of whether a specific rate structure should and will apply. For instance, in the recent Alaska case, the Commission focused on whether, or how, the geographically averaged rate structure for MTS in the "lower 48 states" would be applicable to interstate MTS services to and from points in Alaska. See Integration of Rates and Services, 9 FCC Rcd 3023, 3023 n.2 & 3028 (1994); see also Application of Alascom, Inc., 11 FCC Rcd 732, 743-44 (1995). Rate integration in its historic form, however, merely requires that whatever rate structure a carrier uses in the contiguous 48 states also be used for all services to and from so-called offshore points.

Geographic Averaging. You also asked for more background on how geographic averaging was implemented for Hawaii.

Originally, as a condition to authorizing future satellite services, the Commission said that Hawaii (and Alaska and Puerto Rico) should be integrated "into the uniform mileage rate pattern that now obtains for the contiguous states, with all that such approach implies in terms of nationwide cost averaging and equalization for interstate rate-making purposes." Establishment of Domestic Communications-Satellite Facilities by Non-Governmental Entities, 35 FCC 2d 844, 857 (1972). In a footnote, the Commission added, "For example, among other things, such carriers might explore the possibility of expanding the last mileage step (presently 1911-3000 miles) to include these points, or of adding an additional mileage step with an appropriate increment in rates." Id. at 857 n. 9.

Squire, Sanders & Dempsey

Sharille Ismail, Esquire
May 29, 1996
Page 3

Shortly after this initial decision, AT&T and Hawaiian Telephone Company made minor revisions to their MTS rate structures. The Commission deemed these steps inadequate and instead approved a three step approach: the first two steps would result in two successive one-third reductions in Hawaii-to-Mainland rates, and the third phase would result in full integration into the nationally averaged rate plan by 1979. See Integration of Rates and Services, 61 FCC 2d at 383-87.

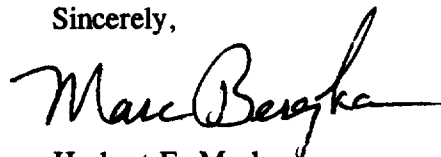
The third phase of integrating Hawaii into the domestic rate structure was subsequently postponed pending resolution of concerns regarding separation of revenues between participating carriers. See Integration of Rates and Services, 72 FCC 2d 672, 672-74 (1978). By an even later agreement among the parties concerned, final integration was postponed to, and achieved on, January 1, 1985. See Integration of Rates and Services, 87 FCC 2d 25, 26-29 (1981); see also Integration of Rates and Services, 1985 FCC LEXIS 2532 at *4.

The implementation discussed above did involve the integration of a rate structure with geographically averaged rate bands. The geographically averaged rate structure for MTS prevailing on the Mainland had much higher per-mile charges for shorter distances than for calls of longer distances. With the integration of Hawaii into the Mainland rate patterns, those calling from or to points within the State were accorded the benefits of this specific rate structure.

In this regard, it also should be noted that geographic averaging makes sense because carriers very often administer their networks as a unit, varying the routing of calls between any two given points based on traffic conditions, capacity, and so forth (and not necessarily with regard to the "airline distance" between the origination and termination points). It may be for this reason, in addition to concepts of universal service, that Congress mandated geographic averaging as the norm.

Thank you again for taking the time to meet with us, and please let us know if we can provide additional information on these or other issues.

Sincerely,



Herbert E. Marks
Marc Berejka

cc: William F. Caton (in duplicate)